IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 512 of 1992

M/s. Shri Ram Board Mill, Bombay .. Petitioner
V/s.
A. Balasubramanian, Commissioner of Income Tax, Bombay and Ors. .. Respondents

Mr. K.B. Bhujle for the Petitioner
Dr. P. Daniel with Mr. G. Hariharan for the Respondents

CORAM : DR. S. RADHAKRISHNAN & J.H. BHATIA, JJ.
DATED : 09.08.2005.

P.C.:-

1. Heard the learned counsel for the Petitioner and the Respondents. By this Petition, the Petitioner is challenging the order dated 16.1.1992 passed by the Commissioner of Income Tax under Section 273 A of the Income Tax Act.

2. The brief facts are that the Petitioner had made two applications for relief under Section 273 A for the purpose of waiver of penalty and interest with regard to assessment years 1982-83 and 1984-85. It appears that the Petitioner had appeared before the Commissioner of Income Tax and filed written submission, strongly relying on judgment of Allahabad High Court in **Ram Sarandas Har Swaroop Mal and Another v. Commissioner of Income Tax and Another 186 ITR 503 (All.)**, wherein Allahabad High Court has construed in favour of the Petitioner.

3. The Respondent No. 1 by his order dated 16.1.1992 granted relief under section 273 A of the Income Tax Act only for the Assessment Year 1982-1983 and had refused to grant the same relief for the Assessment year 1984-1985.

4. In this behalf, it will be relevant to quote the provisions of Section 273 A, which reads as under:-

> "273 A(1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise-
>
> (i) reduce or waive the amount of penalty imposed or imposable on a person under clause (i) of sub-section (1) of section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-section (1) of section 139; or
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> (ii) reduce or waive the amount of penalty imposed or imposable on a person under clause (iii) of sub-section (1) of section 271; or
>
> ....
> ....
>
> (3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order."

5. Shri Bhujle, the learned counsel appearing for the Petitioner strongly contended that on reading the aforesaid clause (3), it is explicitly clear that the Commissioner has jurisdiction to grant relief not for

one assessment year, whereas one or more assessment years, however, the bar was that only once such relief can be granted and not subsequently. To put it in other words, after the assessee has availed the benefit under section 273 A (i), then he can not make another application for the same relief for another assessment year. The contention of Shri Bhujle, is that the assessee is entitled to make an application for waiver of penalty and interest under section 273 A for more than one assessment years and the Commissioner has jurisdiction to grant such relief and once having passed the order under section 273 A, the Commissioner cannot thereafter exercise his jurisdiction. Shri Bhujle terms this as "once in a lifetime opportunity". Shri Bhujle in that behalf, referred to the aforesaid judgment of the Allahabad High Court in **Ram Sarandas Har Swaroop Mal and Another v. Commissioner of Income Tax and Another 186 ITR 503 (All.)**, The aforesaid judgment delivered by B.P. Jeevan Reddy, C.J. (As he then was), has observed, while interpreting the above provision of clause (3) as under:-

> "A reading of the sub-sections shows that, in cases where the requirements mentioned therein are satisfied, the Commissioner gets the jurisdiction to waive the penalty or interest, as the case may be. Merely because the conditions mentioned in sub-section (1) are satisfied, no assessee can claim a total waiver of penalty/interest. It is a

matter within the discretion of the Commissioner. He shall consider all the relevant facts and circumstances of the case and then decide whether penalty/interest should be waived and if so in what measure. Sub-section (3) says that where an order

under sub-section (1) has been made once, it shall not be exercised in respect of the said person again whether in respect of the same assessment year or any other assessment year. At the same time, sub-section (3) also makes it clear that the order may relate to either one assessment year or more than one assessment year. It is not as if the power under sub-section (1) is available only for one assessment year. The true meaning of sub-section (3) is that the power shall be exercised only once in the case of a given person and not more than once."

6. We are in full agreement with the aforesaid observations and we are also clearly of the view that the order may relate either to one assessment year or more than one assessment years and it is not correct to interpret that the power under sub section (i) is available only for one assessment year. Under the aforesaid facts and circumstances, Rule is made absolute in terms of prayer clause (b).

(DR. S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)